

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-3970

October 23, 1985

The Honorable John Drummond  
Senator, District No. 10  
Post Office Box 748  
Greenwood, South Carolina 29646

Dear Senator Drummond:

By your letter of September 10, 1985, you have asked this Office to address the following two questions:

1. Can a city council by ordinance expand the terms of Office of the mayor and council members to four years at any time after the initial form of government has been selected?
2. Is a city council empowered to pay severance pay to a city manager who has resigned from city employment?

The response to your first question is set forth below. We have been advised that the situation which prompted the second question no longer exists, and no opinion is expressed herein as to that question.

As background, this Office has been advised that the City of Greenwood adopted the council-manager form of government by ordinance in November 1975, providing for terms of two years for the mayor and council members. A regular city election was held in April 1976. An ordinance enacted by the Greenwood City Council in August 1976 expanded the terms of the mayor and council members to four years. Your constituent has questioned the legality of this change without first submitting the change to the electorate by a referendum, citing Sections 5-5-10 et seq. of the Code of Laws of South Carolina (1976).

Continuation Sheet Number 2  
TO: The Honorable John Drummond  
October 23, 1985

The statutes cited by your constituent pertain to the initial adoption of a form of municipal government and a subsequent change to another form of government. Pursuant to the predecessor statute of Section 5-5-10, the City of Greenwood selected the council-manager form of government. We are advised that the City is currently operating under the same form of government presently. To change to either the mayor-council or council form of government, Sections 5-5-20 through 5-5-60 would be followed; a referendum would be necessary.

However, the change in question is merely a change in terms of the mayor and council members, rather than a change in the form of municipal government. In that regard, Section 5-15-40 (1984 Cum.Supp.) is applicable:

The mayor and councilmen of each municipality shall be elected for terms of two or four years. Unless otherwise provided by ordinance, four-year terms shall be set so that not more than one-half of the council and mayor shall be elected in the same general election; provided, that in the first election after incorporation of a new municipality or adoption of a form of government pursuant to § 5-5-10, one-half of the councilmen may be elected for terms of two years and one-half of the councilmen and mayor may be elected for terms of four years if necessary to establish staggered terms. Two-year terms shall not be staggered.

There is no requirement of a referendum to change the terms of office of a mayor and members of a city council. Further, there is no statutory limitation as to when or how often the terms of office may be changed, unlike the limitations of one election (referendum) every four years to change the form of municipal government, pursuant to Section 5-5-30 of the Code.

In conclusion, a city council may, by ordinance, expand the terms of a mayor and members of city council at any time after the initial form of government has been selected under the Home Rule Act.

Continuation Sheet Number 3  
TO: The Honorable John Drummond  
October 23, 1985

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

cc: William K. Charles, III, Esquire  
Greenwood City Attorney